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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 DAVID THUMMEL, an individual,
12 Plaintiffs,

13 vs.

14 ELKHORN ENVIRONMENTAL, LLC, a
15 Nevada limited liability company;
16 WERDCO BC, INC., a Nevada
17 corporation; BRANDON CONRAD, an
18 individual; JOHN McCLURE, an
individual; DOES I through V, inclusive;
and ROE corporations I through V,
inclusive,

19 Defendants.

Case No. 2:14-cv-01788-APG-NJK

JOINT NOTICE OF VOLUNTARY
DISMISSAL UNDER FEDERAL RULE OF
CIVIL PROCEDURE 41

20 Pursuant to Federal Rule of Civil Procedure 41, Defendants ELKHORN
21 ENVIRONMENTAL, LLC., WERDCO BC, INC., BRANDON CONRAD, and JOHN McCLURE
22 (hereinafter "Defendants"), and Plaintiff DAVID THUMMEL (hereinafter "Plaintiff"), by and
23 through their respective counsel, having agreed between themselves to resolve this matter, hereby
24 stipulate and respectfully request an order dismissing the action between Plaintiff and Defendants,
25 with prejudice.
26

27 Each of these parties stipulate that this case be dismissed with prejudice. Each party shall
28 bear its own costs and fees for the action and claims dismissed by this Stipulation and Order.

1 In regard to Plaintiffs' Fair Labor Standards Act (FLSA) retaliation claim, the parties assert
 2 that no court approval of the settlement is necessary. The Court's duty to review FLSA settlements
 3 under 29 U.S.C. § 216(c) and *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352–53
 4 (11th Cir. 1982) extends only to FLSA wage claims, not FLSA retaliatory discharge claims.

5 Specifically, § 216(c) requires the Department of Labor to supervise settlements of FLSA
 6 wage claims brought under § 216(b), but says nothing regarding supervision of FLSA retaliatory
 7 discharge claims, which are brought under § 215(a) (3). *See Dorner v. Polsinelli, White, Vardeman*
 8 *& Shalton, P.C.*, 856 F.Supp. 1483, 1489 (D. Kan. 1994). Thus, the plain language of the FLSA and
 9 the omission of any reference to supervision of FLSA retaliatory discharge claims in § 216(c) (while
 10 specifically referencing FLSA wage claims) supports the conclusion that no supervision of FLSA
 11 retaliatory discharge claims is required. *Id.*

12 Moreover, *Lynn's Food* requires only “compromises of FLSA back wage or liquidated
 13 damage claims” to be presented to the court. *Lyn's Food*, 679 F.2d at 1355; *Yost v. Wyndham*
 14 *Vacation Resorts, Inc.*, 2012 WL 1165598, at *3 (M.D.Fla. Mar.26, 2012), report and
 15 recommendation adopted, 2012 WL 1165468 (M.D.Fla. Apr.9, 2012); *McQuillan v. H.W. Lochner,*
 16 *Inc.*, 2013 WL 6184063, at *3 (M.D.Fla. Nov.25, 2013). Thus, an FLSA retaliatory discharge claim
 17 that is settled along with a wage claim does not need to be reviewed for its fairness, “provided that
 18 its terms do not serve to contaminate the [settlement] Agreement as to the FLSA [wage] claim.”
 19 *Yost*, 2012 WL 1165598, at *3; *McQuillan*, 2013 WL 6184063, at *3.

20 Here, Plaintiff brought all of his wage claims under Chapter 608 of the Nevada Revised
 21 Statutes and has not filed any FLSA wage claims. Therefore, there is no risk whatsoever that the
 22 settlement of Plaintiff's FLSA retaliatory discharge claim could contaminate the settlement of a
 23 FLSA wage claim.

24 For the forgoing reasons, the parties respectfully request an order dismissing the action
 25 between Plaintiff and Defendants, with prejudice.

26 IT IS SO ORDERED.

27 Dated: December 3, 2014.

28 
 UNITED STATES DISTRICT JUDGE

1 Dated: December 3, 2014

Dated: December 3, 2014

2 Respectfully submitted,

Respectfully submitted,

3
4 /s/ Katie Blakey, Esq.

/s/ Andrew L. Rempfer, Esq.

5 ROGER L. GRANDGENETT II, ESQ.

ANDREW L. REMPFER, ESQ.

6 JAMES T. WINKLER, ESQ.

COGBURN LAW OFFICES

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Attorneys for Plaintiff

7 Attorneys for Defendants

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11 **IT IS SO ORDERED.**

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13
14 UNITED STATES DISTRICT COURT JUDGE

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17 Dated: _____